



Patricia Diaz Dennis
Senior Vice President and
Assistant General Counsel-
Regulation and Law

SBC Communications Inc.
175 E. Houston Street
San Antonio, Texas 78205
Phone 210 351-2700

April 14, 1997

EX PARTE OR LATE FILED

RECEIVED

APR 14 1997

Federal Communications Commission
Office of Secretary

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

**Re: In the Matter of Southwestern Bell Telephone Company's Comparably
Efficient Interconnection Plan for Security Service, CC Docket Nos. 85-229,
90-623 and 95-20**

Dear Mr. Caton:

On April 3, 1997, Southwestern Bell Telephone Company ("SWBT") filed an *ex parte* letter in the above-referenced docket addressing how its proposed sales agency arrangements would comply with the Commission's recent Report and Order implementing Section 275 of the Communications Act of 1934, as amended (the "Act").¹ SWBT served the letter on the parties, and one party -- AICC -- has filed a responsive letter.² AICC's response raises a single issue -- the "compensation" arrangement between SWBT and an alarm service provider.

SWBT has already demonstrated that a variety of factors will ensure that any sales agency arrangements it may enter into with alarm monitoring service providers will not constitute an impermissible intertwining of SWBT's interests with those of the providers.³ As to the compensation arrangement, AICC and SWBT agree that the critical question under the Second Report and Order is whether SWBT "would have a financial stake in the success of its chosen alarm partners."⁴ To demonstrate its compliance with this criterion, SWBT has made several commitments. Each was

¹ In the Matter of Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket No. 96-152, released March 25, 1997 ("Second Report and Order").

² AICC *ex parte* letter, dated April 7, 1997 ("AICC's April 7 letter").

³ SWBT *ex parte* letter, dated April 3, 1997 ("SWBT's April 3 letter").

⁴ AICC's April 7 letter, p. 1.

Mr. William F. Caton

Page 2

April 14, 1997

drawn directly from the Second Report and Order.⁵ In particular, SWBT committed that any compensation for its sales agency services (1) would depend solely upon SWBT's own performance as a sales agent; (2) would not depend upon an alarm monitoring service provider's performance of its services; and (3) would not be based upon the net revenues of an alarm monitoring service provider.⁶

By contrast, AICC insists that the Commission engage in detailed rate regulation of sales agency compensation by, for example, prescribing an amortization schedule for commission payments not paid on a one-time basis, requiring that the commission structure be supported by a showing of costs incurred, and requiring that commissions be capped at a level to AICC's liking.⁷ Neither the Act, the Second Report and Order, nor any other legal/regulatory consideration requires such conditions. It is sufficient that SWBT intends to negotiate the exact terms of compensation with an unaffiliated provider on an arm's length basis, that SWBT will do so within the confines established by the Second Report and Order, and that SWBT will properly consider both the costs and level of any marketing efforts it may contribute in a particular case and the number of new customers it may produce for the provider's benefit.⁸

⁵ Second Report and Order, para. 39.

⁶ SWBT's April 3 letter, p. 2. One commitment SWBT did not make (contrary to AICC's *ex parte* representation) is to charge alarm companies "a specified fee per customer . . . regardless of the size or revenues generated from the account." While SWBT stated that the sales agency compensation would likely be based on a flat rate per customer charge, it also made clear that the exact terms of the compensation will be the subject of negotiations between SWBT and the alarm service provider. SWBT's April 3 letter, p. 2, n. 3. The critical question under the Second Report and Order is whether SWBT will have a financial stake in an alarm company. The answer to that question does not depend on whether the sales agency fee is fixed or variable.

⁷ As an association of competitors in the alarm services industry, AICC is attempting, through the intermediation of the FCC, to fix the prices its members pay in sales agency commissions. AICC asserts the Bureau should apply "three measures of reasonableness" in approving the CEI plan. Were this trade association itself to set "reasonable" prices for its own members, it would violate antitrust laws. See generally, Federal Trade Commission v. Superior Court Trial Lawyers Association, 493 U.S. 411 (1990); Arizona v. Maricopa County Medical Society, 457 U.S. 332 (1982). The Commission should not assist the AICC in doing indirectly what it cannot do directly.

⁸ Moreover, the requirements AICC suggests do not address the concern of the
(continued...)

Mr. William F. Caton

Page 3

April 14, 1997

The Commission has already articulated the considerations bearing upon potential compensation arrangements. Attempting to particularize the details of such arrangements on a prospective basis would be unnecessary on policy grounds, anticompetitive, and well beyond the requirements of the Second Report and Order. The Commission has already correctly concluded that Section 275 of the Act does not prohibit a BOC from acting as a sales agent or marketing alarm monitoring services.⁹ SWBT does not possess any market power in offering such services.¹⁰ There is no basis for imposing the type of rate regulation that AICC seeks.¹¹

⁸(...continued)

Second Report and Order that sales agency compensation not be tied to the commercial success of the alarm monitoring service provider. As stated clearly in SWBT's April 3 letter, SWBT's compensation will not be based on the net revenues of the alarm service provider. While SWBT hopes the sales agency relationship will be profitable for both it and any alarm service providers, there is no guarantee of profits for either party. In any event, the compensation due SWBT from the alarm company will be based on SWBT's performance as a sales agent and, whatever its level, will be payable whether the alarm provider realizes substantial, minimal, or even no profit in offering alarm services.

⁹ Second Report and Order, para. 37.

¹⁰ Thus, there is no way for SWBT to force or coerce an unwilling alarm service provider into a sales agency relationship. Rather, SWBT will have to offer terms and conditions for its services, including compensation arrangements, that are attractive enough to an alarm monitoring service provider to induce it to enter into a sales agency arrangement with SWBT. Those terms and conditions will be the subject of commercial negotiations between SWBT and alarm monitoring service providers. Moreover, as explained in SWBT's April 3 letter, once SWBT enters into a sales agency relationship with an alarm monitoring service provider, it will make available to other comparably qualified providers the same terms and conditions of the sales agency arrangement on a nondiscriminatory basis.

¹¹ The "three measures of reasonableness" AICC would have the FCC impose are an attempt to convert this CEI plan approval proceeding into a rulemaking. In the Second Report and Order the Commission rejected AICC's requests to impose restrictive rules on BOCs and, instead, adopted general guidelines that include the structure of compensation but not specific amounts such as ceilings and floors. This is not the proceeding for imposing broad "reasonableness" requirements on the amount of sales agency compensation (even if they were appropriate -- which they are not).

Mr. William F. Caton

Page 4

April 14, 1997

Finally, with this exchange of letters the record is now complete and the proceeding is ripe for a decision. Accordingly, SWBT again respectfully requests that the Bureau expeditiously approve SWBT's pending CEI Plan for Security Service.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Diaz Dennis".

Patricia Diaz Dennis

Sr. Vice President & Assistant

General Counsel-Regulation and Law

cc: Mr. Welch

Ms. Matthey

Ms. Pabo

Mr. Teplitz

All Parties of Record (Attachment A)

PARTIES OF RECORD

**Stephen S. Schulston, Esq.
Richard L. Hetke, Esq.
Frank M. Panek, Esq.
Ameritech Corporation
30 South Wacker Drive, 39th Floor
Chicago, IL 60606**

BY OVERNIGHT MAIL

**James K. Smith
Director-Federal Regulatory
Ameritech Corporation
1401 H Street, N.W.
Washington, D.C. 20005**

BY HAND

**Danny E. Adams, Esq.
Steven A. Augustino, Esq.
Kelley, Dyre & Warren, L.L.P.
1200 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036
(Counsel for the Alarm Industry Communications Committee)**

BY HAND